IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 539 MISC.

FAR EAST CONFERENCE, UNITED STATES LINES COMPANY, STATES MARINE CORPORATION, M. V. NONSUCO INC., LANCASHIRE SHIPPING CO., LTD., SKIBSAKTIESELSKAPET IGADI, A. F. KLAVENESS & CO. A/S, THE DE LA RAMA STEAMSHIP CO., INC., WATERMAN STEAMSHIP CORPORATION, PRINCE LINE, LTD., LYKES BROS. STEAMSHIP CO., INC., AMERICAN PRESIDENT LINES, LTD., SWEDISH EAST ASIATIC CO., LTD., NEDERLANDSCHE STOOMVAART MAATSCHAPPIJ "OCEAAN" N. V., AKTIESELSKAPET IVARANS REDERI, ISTHMIAN STEAMSHIP COMPANY, ELLERMAN & BUCKNALL STEAMSHIP CO., LTD., FEARNLEY & EGER, WILHELMSENS DAMPSKIBSAKTIESELSKAB, DAMPSKIBSSELSKABET AF 1912 A/S, THE BANK LINE, LTD., THE CHINA MUTUAL STEAM NAVIGATION CO., LTD., SILVER LINE, LTD., THE OCEAN STEAMSHIP COMPANY, LTD., A/S BESCO, A/S DAMPSKIBSSELSKABET SVENDBORG,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent,

and

FEDERAL MARITIME BOARD,

Intervenor-Respondent.

MOTION FOR LEAVE TO FILE PETITION FOR WRIT
and
PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

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and

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CITATIONS.

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OCTOBER TERM, 1951

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FAR EAST CONFERENCE, UNITED STATES LINES COMPANY, STATES MARINE CORPORATION, M. V. NONSUCO INC., LANCASHIRE SHIPPING CO., LTD., SKIBSAKTIESELSKAPET IGADI, A. F. KLAVENESS & CO. A/S, THE DE LA RAMA STEAMSHIP CO., INC., WATERMAN STEAMSHIP CORPORATION, PRINCE LINE, LTD., LYKES BROS. STEAMSHIP CO., INC., AMERICAN PRESIDENT LINES, LTD., SWEDISH EAST ASIATIC CO., LTD., NEDERLANDSCHE STOOMVAART MAATSCHAPPIJ "OCEAAN" N. V., AKTIESELSKAPET IVARANS RÉDERI, ISTHMIAN STEAMSHIP COMPANY, ELLERMAN & BUCKNALL STEAMSHIP CO., LTD., FEARNLEY & EGER, WILHELMSENS DAMPSKIBSAKTIESELSKAB, DAMPSKIBSSELSKABET AF 1912 A/S, THE BANK LINE, LTD., THE CHINA MUTUAL STEAM NAVIGATION CO., LTD., SILVER LINE, LTD., THE OCEAN STEAMSHIP COMPANY, LTD., A/S BESCO, A/S DAMPSKIBSSELSKABET SVENDBORG,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent,

and

FEDERAL MARITIME BOARD,

Intervenor-Respondent.

Motion for Leave to File Petition for Writ of Certiorari.

Now come John Milton and Elkan Turk, counsel for petitioners other than the petitioner, Isthmian Steamship Company, and Josiah Stryker, counsel for petitioner, Isthmian Steamship Company, and respectfully move this Court for leave to file the petition for writ of certiorari, hereto annexed, under Section

1651(a) of Title 28, United States Code (formerly Section 262, Judicial Code, 28 U. S. C. Sec. 377), directed to the District Court of the United States for the District of New Jersey, to review that part and so much of an order of that Court, entered March 7, 1951, more particularly described in the petition, as denied petitioners' motions to dismiss the complaint herein on the ground that the Court was without jurisdiction over the subject matter of this action and, alternatively, on the ground that, because of the provisions of the Shipping Act, 1916, as amended, no cause of action under the Sherman Act was alleged; and for such other and further relief as may be just and proper.

Dated: June 1, 1951.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No.

FAR EAST CONFERENCE, UNITED STATES LINES COMPANY, STATES MARINE CORPORATION, M. V. NONSUCO INC., LANCASHIRE SHIPPING CO., LTD., SKIBSAKTIESELSKAPET IGADI, A. F. KLAVENESS & CO. A/S, THE DE LA RAMA STEAMSHIP CO., INC., WATERMAN STEAMSHIP CORPORATION, PRINCE LINE, LTD., LYKES BROS. STEAMSHIP CO., INC., AMERICAN PRESIDENT LINES, LTD., SWEDISH EAST ASIATIC CO., LTD., NEDERLANDSCHE STOOMVAART MAATSCHAPPIJ "OCEAAN" N. V., AKTIESELSKAPET IVARANS REDERI, ISTHMIAN STEAMSHIP COMPANY, ELLERMAN & BUCKNALL STEAMSHIP CO., LTD., FEARNLEY & EGER, WILHELMSENS DAMPSKIBSAKTIESELSKAB, DAMPSKIBSSELSKABET AF 1912 A/S, THE BANK LINE, LTD., THE CHINA MUTUAL STEAM NAVIGATION CO., LTD., SILVER LINE, LTD., THE OCEAN STEAMSHIP COMPANY, LTD., A/S BESCO, A/S DAMPSKIBSSELSKABET SVENDBORG,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent,

and

FEDERAL MARITIME BOARD,

Intervenor-Respondent.

Petition for Writ of Certiorari to the District Court of the United States for the District of New Jersey.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioners, Far East Conference, United States Lines Company, States Marine Corporation,

M. V. Nonsuco Inc., Lancashire Shipping Co., Ltd., Skibsaktieselskapet Igadi, A. F. Klaveness & Co. A/S, The De La Rama Steamship Co., Inc., Waterman Steamship Corporation, Prince Line, Ltd., Lykes Bros. Steamship Co., Inc., American President Lines, Ltd., Swedish East Asiatic Co., Ltd., Nederlandsche Stoomvaart Maatschappij "Oceaan" N. V., Aktieselskapet Ivarans Rederi, Isthmian Steamship Company, Ellerman & Bucknall Steamship Co., Ltd., Fearnley & Eger, Wilhelmsens Dampskibsaktieselskab, Dampskibsselskabet af 1912 A/S, The Bank Line, Ltd., The China Mutual Steam Navigation Co., Ltd., Silver Line, Ltd., The Ocean Steamship Company, Ltd., A/S Besco, A/S Dampskibsselskabet Svendborg, respectfully pray for a writ of certiorari to the District Court of the United States for the District of New Jersey, to review that part and so much of an order of that Court entered March 7, 1951 (R. 104), as denied petitioners' motions to dismiss the action on the ground that the Court was without jurisdiction of the subject matter thereof and, alternatively, on the ground that, because of the provisions of the Shipping Act, 1916, as amended, no cause of action under the Sherman Act was alleged. A certified transcript of the record in this case is furnished herewith, in accordance with Rule 38, Paragraph 1, of the Rules of this Court.

Opinion Below.

The opinion of the District Court, rendered on petitioners' motions above referred to is reported at 94 F. Supp. 900 (1951) (R. 97).

JURISDICTION.

The jurisdiction of this Court is invoked under Section 1651(a) of Title 28, U. S. Code (formerly Section 262 of the Judicial Code, 28 U. S. C. § 377) as enacted by Public Law 773, 80th Congress, 2d Session. Section 2 of the Expediting Act of February 11, 1903, as amended (15 U. S. C. § 29), confers upon this Court exclusive appellate jurisdiction of civil suits brought by the United States under the Sherman Act. Grant of the common law writ of certiorari, as authorized by Section 1651(a) of Title 28, U. S. Code, is sought in aid of such exclusive appellate jurisdiction. The following decisions, more fully discussed in the argument which follows, sustain the power and jurisdiction of this Court to review the order and judgment, review of which is hereby sought: *United States Alkali Export Assn.* v. *United States*, 325 U. S. 196 (1945); *De Beers Consolidated Mines* v. *United States*, 325 U. S. 212 (1945).

The grant of the writ under these unusual circumstances is respectfully sought (1) to correct a claimed excess of jurisdiction by the Court below and the application by that Court of the Sherman Act to a state of facts which is excluded from its purview by the Shipping Act; and (2) in furtherance of justice in a question of great public importance.

STATEMENT OF THE CASE.

The complaint alleges violations of Sections 1 and 2 of the Sherman Act (15 U. S. C. §§ 1, 2, Appendix, p. 25), and invokes the jurisdiction of the Court under Section 4 of that Act (15 U. S. C. § 4, Appendix, p. 25) (R. 1). It alleges that the defendants include

all but one of the steamship lines which regularly operate from United States Atlantic and Gulf of Mexico ports to ports in the Far East (R. 4). It further alleges that the defendant lines are organized into a steamship conference, the defendant Far East Conference, pursuant to a written Conference Agreement which had in 1922, long prior to the institution of the suit, been filed with, and approved, pursuant to Section 15 of the Shipping Act, 1916, as amended (46 U. S. C. § 814, Appendix, p. 31), by the United States Shipping Board, a predecessor in authority of the Federal Maritime Board (R. 4).

The complaint charges that the defendant lines combined and conspired to establish and maintain a system of "contract rates" and higher "non-contract rates", the sole consideration for the enjoyment of the lower contract rates being the agreement of the shipper to patronize the members of the Conference exclusively in effecting the shipper's transportation requirements in the outbound Far East trade (R. 5). A further charge is made that the defendant lines carry practically all of the commercial tonnage in that trade (R. 4).

The complaint alleges as a conclusion that the effect of the dual rate system is coercive upon shippers and has the effect of driving out of the Far East trade any competitor who is not a member of the Conference (R. 6). The further conclusion is alleged that the acts complained of have restrained and monopolized the trade of the United States with the foreign countries in the Far East (R. 6).

The petitioners duly filed their answers (R. 21, 46) and supplemental answers (R. 76, 85) in which they alleged the historical and economic facts which, in

their view, amply justify the maintenance of the dual rate system.

The plaintiff moved for judgment on the pleadings (R. 93). The petitioners thereupon made motions (R. 72, 74), simultaneously returnable, to dismiss the complaint on the ground, generally stated, that the District Court was without jurisdiction and that no cause of action under the Sherman Act was alleged.

The petitioners' motion was founded upon the contention that only violations of the Shipping Act were alleged concerning which the United States Maritime Commission had exclusive primary jurisdiction, subject only to direct court review, as provided by statute. That Commission, the predecessor of the Federal Maritime Board, intervened and joined in petitioners' motions.

The Court below denied all of these motions. Petitioners here, of course, seek review only of so much of the order as denied petitioners' motions to the extent above stated.

Questions Presented.

The question presented is a novel and very narrow one. This Court, in *United States Navigation Co.* v. *Cunard Steamship Co.*, 284 U. S. 474 (1932), determined that in a similar case in which a private steamship company was the plaintiff, the District Court was without jurisdiction. The complaint in the *United States Navigation* case charged that the defendants there violated the antitrust laws by maintaining a system of "contract rates" and higher "non-contract rates", the former being available only to

those shippers who agreed to confine their shipments exclusively to the defendant lines. The complaint in the *United States Navigation* case also charged various other acts not here charged against the defendants. Whereas, however, the complaint in the case at bar alleges that the defendant steamship companies had filed and obtained approval of their Conference Agreement (complaint, Par. 29, and Exhibit A attached to complaint) (R. 4, 8), the complaint in the *United States Navigation* case did not allege that the agreement among the steamship companies there sued had been so filed or so approved. Hence, the case at bar would seem more imperatively to demand primary disposition by the Maritime Board than did the *United States Navigation* case.

The narrow question, then, is does a different rule apply because the United States rather than a private litigant is the plaintiff. The Court below answered this question in the affirmative. This precise question has never been answered by this Court.

Stated more formally, the question is whether the District Court had jurisdiction of the subject matter of the cause or, on the other hand, whether the administrative body created by the Shipping Act, 1916, as amended, had exclusive primary jurisdiction over such subject matter; and whether, in the light of the Shipping Act, any cause of action under the Sherman Act was alleged.

Statutes Involved.

The pertinent sections of the Sherman Act and of the Shipping Act, 1916, as amended, are set forth in Appendix hereto attached.

Specifications of Errors to Be Urged.

The District Court erred in denying the motions to dismiss the complaint, which motions were made upon the ground that the District Court had no jurisdiction of the subject matter of the action and that said subject matter was within the exclusive primary jurisdiction of the administrative body created by the Shipping Act, 1916, and the acts amendatory thereof; and upon the further ground that in view of the provisions of the Shipping Act no cause of action under the Sherman Act was alleged.

Reasons for Granting the Writ.

(a) *The Public Importance of the Questions Involved.*

The importance of this question to the public of the United States cannot be overemphasized. In a recent case before it (*Isbrandtsen Company, Inc.* v. *North Atlantic Continental Freight Conference,* 3 F. M. B. 235 [1950], order set aside but with no disapproval of the finding here referred to, *Isbrandtsen Company, Inc.* v. *United States,* S. D. N. Y., not yet reported), the Federal Maritime Board stated that its predecessors "since 1931 approved no fewer than thirty-two conference agreements, which provide either specifically or inferentially for the dual rate system—and of these agreements, twenty-four are now in effect and the respective conferences are making active use of the dual rate system".

Each of the conferences thus employing the dual rate system indulges in the practice which is here charged to be wrongful and which was also charged

against the defendants in the *U. S. Navigation* case. Each such conference serves a separate branch of the commerce of the United States. Of course, each of those conferences consists of a substantial number of individual steamship companies. In turn, each of these companies serves the transportation needs of large numbers of American exporters and importers. Contracts exist between the shippers or consignees and the steamship companies under which the "contract rates" are enjoyed. Uncertainty and suspense will overhang all of the branches of industry, commerce and transportation in all of the trades in which the dual rate system is in operation if the primary jurisdiction of the Board to determine the lawfulness or unlawfulness of the respective system may be invaded by the courts.

It is petitioners' position that under certain competitive conditions conferences cannot exist without employing the dual rate system. If, under such conditions, they should be precluded from employing that system, rate wars and madly fluctuating freight rates would result. It was one of the findings of the so-called Alexander Committee, which recommended the adoption of the Shipping Act, that such rate wars constitute an evil not alone to the steamship lines but as well to the exporters and importers who depend upon steamship service as their means of transportation (H. R. Doc. 805, 63d Cong., 2d Sess., 416-417 [1914]). Fluctuation of freight rates prevents the merchant from quoting C. I. F. prices for forward delivery. If he cannot quote such prices, he cannot compete with merchants in foreign countries whose laws do not preclude steamship companies from com-

bining in such manner as to assure stability of freight rates.

Petitioners submit that it is of the maximum importance that uniformity be established in the determination of the legality of the several dual rate systems. Uniformity can be secured only if there is a single tribunal which shall set the economic standards, and shall make the original findings, upon which questions of legality are predicated; otherwise, all engaged in our tremendous ocean-borne commerce, will be involved in uncertainty and doubt as to the standards which shall be applied to their conduct dependent upon the identity of the party who summons them to account.

(b) *Intervention of the Federal Maritime Board.*

The importance of this issue is accented by the intervention below of the United States Maritime Commission. In support of its petition for leave to intervene, the Commission filed a memorandum in which the following statement appeared:

> "The Commission is in full agreement with the defendants that the offenses charged against them pertain to matters committed by law exclusively to the Commission's primary jurisdiction, which jurisdiction will be materially impaired, and, indeed, effectively frustrated if plaintiff is permitted to maintain this action."

This contest for jurisdiction between the Maritime Board and the courts cries out for final decisive determination at this stage of the litigation.

(c) *Summary of Grounds Upon Which the Writ Should Be Allowed.*

The petitioners respectfully urge the allowance of the writ (1) so as to avoid a lengthy and burdensome trial of this case before the District Court, when it may become necessary, later, to retry the same issues before the Federal Maritime Board in the event that this Court should ultimately determine that the District Court is without jurisdiction; (2) because the questions presented by this petition are most appropriate for determination at the threshhold of the litigation; (3) because the questions arise in a field (that of international transportation and commerce) of which the importance is incalculable and permanent; (4) because steamship conferences will be confused in their plans and practices until it shall be known whether dual rate systems established by them are to be judged by a single standard set up by a board of experts, or whether they may be judged by standards as numerous as are the judicial districts in the United States, dependent upon whether the Department of Justice determines to sue and in what district a single conference member may be found who meets the Sherman Act jurisdictional requirements; and (5) because similar uncertainty will afflict the innumerable shippers who have made contracts with the numerous shipping conferences under which they enjoy the lower contract rate.

ARGUMENT.

(a) *This Is an Appropriate Case for the Allowance of the Writ of Certiorari.*

Petitioners recognize that they must here invoke the extraordinary power of this Court to grant common law writs of certiorari as authorized by Section 1651(a) of Title 28 of the United States Code.

That this is an appropriate case for the granting of such writ, is established by *United States Alkali Export Assn.* v. *United States,* 325 U. S. 196 (1945). There, as here, defendants in an antitrust suit had been defeated in the District Court on a motion to dismiss which had raised the contention that an administrative agency, rather than the courts, had jurisdiction. This Court said, at page 203:

> "The questions now presented involve the propriety of the exercise, by the district court, of its equity jurisdiction, and an asserted conflict between its jurisdiction and that of an agency of Congress said to be charged with the duty of enforcing the antitrust laws in the circumstances of the present case. If petitioners' motion was well founded, its denial operated to thwart the asserted purpose of Congress to afford to export associations, which overstep the bounds of the granted immunity, opportunity, with the expert aid of the Trade Commission, to retrace their steps, without being subjected to the penalties of the law. Exercise of its jurisdiction by the district court would preclude the Commission from carrying out its asserted functions of investiga-

tion, recommendation and report before any suit by the United States. This would be more than the mere denial of the right of a suitor such as Congress must have contemplated would be corrected by recourse to the prescribed appeal procedure. It would be a frustration of the functions which Congress had directed the Commission to perform and of the policy which Congress presumably sought to effectuate by their performance.

"The hardship imposed on petitioners by a long postponed appellate review, coupled with the attendent infringement of the asserted Congressional policy of conferring primary jurisdiction on the Commission, together support the appeal to the discretion of this Court to exercise its power to review the ruling of the district court in advance of final judgment. The case is analogous to those in which this Court has, by writs issued under § 262, reviewed the action of district courts, alleged to be in excess of their authority, by which they have foreclosed the adjudication of rights or the protection of interests committed to the jurisdiction of a state officer or tribunal * * * [citing cases]."

We also refer the Court to *De Beers Consolidated Mines* v. *United States,* 325 U. S. 212 (1945).

The newly enacted 28 U. S. C. § 1651(a) is, except for the omission of the provision relative to the writ of *scire facias,* expressive of the Congressional intent to codify the application of the common law writ of certiorari to such cases as the *Alkali* case and the *De Beers* case. Upon this point, we refer to the re-

viser's notes, H. R. Rep. No. 308, 80th Cong., 1st Sess., A 145 (1947), and H. R. Rep. No. 2646, 79th Cong., 2d Sess., A 139 (1946). The reviser's notes are of great persuasive force. *Ex parte Collett*, 337 *U. S.* 55, 68-69 (1949); *U. S. v. National City Lines*, 337 U. S. 78, 81 (1949).

(b) *The Rule in the United States Navigation Case Should Be Applicable Here.*

United States Navigation Co. v. Cunard Steamship Co., 284 U. S. 474 (1932), involved an antitrust injunction suit which presented a parallel to the case at bar in all respects except two. There, the plaintiff was a steamship line which competed with the conference; and, being a private litigant, perforce invoked Section 16 of the Clayton Act (15 U. S. C. § 26, Appendix, p. 26). Here, the plaintiff is the United States. There, the complaint did not allege that the conference agreement had been filed and approved under Section 15 of the Shipping Act. Here, the complaint annexes the Conference Agreement as an exhibit and alleges its approval in 1922 (R. 4, 8).

The gravamen of the complaint in the case at bar is the conduct of a dual rate system. That the maintenance of a dual rate system was the chief charge made in the *U. S. Navigation* complaint, amply appears from the following language of this Court at page 479:

> "The conspiracy involves the establishment of a general tariff rate and a lower contract rate, the latter to be made available only to shippers who agree to confine their shipments to the lines of respondents. The differentials thus created be-

tween the two rates are not predicated upon volume of traffic or frequency or regularity of shipment, but are purely arbitrary and wholly disproportionate to any difference in service rendered, the sole consideration being their effect as a coercive measure."

After reciting the pertinent provisions of the Shipping Act, this Court stated at page 485:

"A comparison of the enumeration of wrongs charged in the bill with the provisions of the sections of the Shipping Act above outlined conclusively shows, without going into detail, that the allegations either constitute direct and basic charges of violations of these provisions or are so interrelated with such charges as to be in effect a component part of them; and the remedy is that afforded by the Shipping Act, which to that extent supersedes the antitrust laws. Compare *Keogh* v. *Chicago & N. W. Ry. Co., supra,* at p. 162. The matter, therefore, is within the exclusive preliminary jurdisdiction of the Shipping Board."

The Court considered the unique nature of the business of ocean transportation and with regard thereto said at page 485:

"The [Shipping] act is restrictive in its operation upon some of the activities of common carriers by water, and permissive in respect of others. Their business involves questions of an exceptional character, the solution of which may call for the exercise of a high degree of expert and technical knowledge. Whether a given agreement

among such carriers should be held to contravene the act may depend upon a consideration of economic relations, of facts peculiar to the business or its history, of competitive conditions in respect of the shipping of foreign countries, and of other relevant circumstances, generally unfamiliar to a judicial tribunal, but well understood by an administrative body especially trained and experienced in the intricate and technical facts and usages of the shipping trade; and with which that body, consequently, is better able to deal."

It is the position of the petitioners that the expertise of the Maritime Board is as essential when the United States, represented by the Department of Justice, is the complaining party, as when a private suitor seeks similar relief. Reason requires that the tribunal which presides in the one case should be as specialized and expert as the one which presides in the other. The demands of logic in this respect are fortified by the pertinent statutes appropriately construed.

The Court below attempted to distinguish the *United States Navigation* case from the case at bar on the ground that in this case the Government is the plaintiff and that the Shipping Act contains no provision permitting the Government to prosecute a complaint before the Maritime Board, while a private litigant has this right.

We respectfully submit that the Court below misunderstood the great purpose of the Shipping Act. Here, for the first time, the Congress legalized shipping conferences. To assure, however, that the public should have the benefits thereof and not suffer any of their possible abuses, the Congress set over the ship-

ping industry a new agency which, by continuous supervision, would stand as the protector of the public interest.

It is the duty of the Maritime Board to determine whether or not an existing practice is or is not lawful and in the public interest, as prescribed by the Act, and to apply the remedies therein provided with respect to any practice found by it to be unlawful. In deciding this question, it is the duty of the Board to consider the exceptional character of the foreign shipping business, the competitve conditions under which it operates, and all other relevant circumstances, and to apply its expert knowledge of the business in reaching a conclusion. The Board, as an agency of the United States, has full power to institute, on its own motion, any proceeding for the violation of the Act and, except as to orders for the payment of money, may in such a proceeding enforce the Act to the same extent as if it were determining an adversary proceeding (Shipping Act, § 22, 46 U. S. C. § 821, Appendix, p. 34).

Under Section 29 of the Shipping Act (46 U. S. C. § 828, Appendix, p. 38), the Attorney General is given specific power and authority to apply to the District Courts for the enforcement of any order thus entered by the Board. Sections 14, 15 and 32 of the Act (46 U. S. C. §§ 812, 814, 831, Appendix, pp. 28, 31, 40) provide both civil and criminal penalties in case of the violation of any of its prohibitions. The purpose of the Act, which is permissive as well as restrictive, could not be accomplished unless the Maritime Board has exclusive primary jurisdiction. We, therefore, believe that it is immaterial whether a proceeding under the Act may be instituted before the

Board by the Attorney General, or whether the sole power initially to enforce the provisions of the Act is vested in the Maritime Board.

Notwithstanding, however, that the Congress appointed the Maritime Board as the prime guardian of the public interest in such matters, it is, nonetheless, our contention that the United States, when represented by the Attorney General, may also set in motion the quasi judicial functions of the Board. The term "person" as used in the Act is broad enough to include a body politic. *California* v. *United States*, 320 U. S. 577 (1944).

The criterion enunciated by this Court in *United States* v. *Cooper Corp.*, 312 U. S. 600 (1941), *i. e.*, which interpretation of the term "person" would the better accomplish the Congressional purpose, when applied to the provisions of the Shipping Act and in the light of its legislative history, compels the conclusion that the United States is a person who may prosecute a proceeding before the Maritime Board. These matters we shall be prepared to elaborate if the Court shall see fit to allow our petition.

(c) *No Prior Decision of This Court Requires an Adverse Determination of the Question.*

This Court has never held broadly that the rule of the *United States Navigation* case is not applicable to an antitrust suit instituted by the Department of Justice. The cases relied upon below, which will undoubtedly be cited here, constitute authority for no such proposition.

United States v. *Borden Co.*, 308 U. S. 188 (1939).

In the *Borden* case, the indictment was found not only against dairy farmers and distributors of milk, who were subject to the Agricultural Marketing Agreement Act of 1937 (7 U. S. C. §§ 671-674) and its predecessor acts, and the Capper-Volstead Act (7 U. S. C. §§ 291-292), but as well against leaders of a truck drivers union and officials of the City of Chicago, charging a conspiracy to fix prices. The indictment was attacked upon the ground that primary jurisdiction was vested in the Secretary of Agriculture.

It at once appears that the parties to the conspiracy transcended the classification of persons who were subject to regulation by the Secretary of Agriculture, *i. e.*, they included union leaders and city officials. That this Court gave controlling effect to this distinction, in disposing of the defendant's motion under the Capper-Volstead Act, amply appears from its language at pages 204 and 205.

The Agricultural Marketing Agreement Act validated certain agreements among parties engaged in the dairy industry, as Section 15 of the Shipping Act validates certain agreements among common carriers by water. However, the former Act did not condemn as illegal agreements which did not conform to the standards of the Act, as the Shipping Act condemns as illegal agreements which do not meet its standards. With respect to the former Act, if illegality were to be charged, it must of necessity be charged under the Sherman Act. That this Court gave effect to this distinction appears from the language of this Court at pages 199-200. Moreover, the Court found in the *Borden* case that such of the defendants as were subject to the Act had not complied with its provisions.

United States Alkali Export Assn. v. *United States*, 325 U. S. 196 (1945).

The *Alkali* case was an antitrust suit against members of an Export Trade Association organized under the Webb-Pomerene Act (15 U. S. C. §§ 61-65). The defendants there moved to dismiss on the ground, among others, that primary jurisdiction lay in the Federal Trade Commission. This Court rejected that contention on two grounds: First, that the Webb-Pomerene Act did not vest in the Federal Trade Commission the power to adjudicate any controversies, and, second, that the acts charged were not declared by the Webb-Pomerene Act itself to be illegal.

As to the first point, the Commission's power was merely to investigate and report. This point was stressed by this Court at page 206:

> "But while it [the Webb-Pomerene Act] empowers the Commission to investigate, recommend and report, it gave the Commission no authority to make any order or impose any prohibition or restraint, or make any binding adjudication with respect to these violations."

The gist of this Court's opinion on the second point is found in the following sentence at page 208:

> "Further, there is no want of specific authority for the United States to enforce the antitrust laws; the violations here alleged are not violations of the Webb-Pomerene Act but of the Sherman Act, and it is the latter which provides for suits to be brought by the United States."

(d) *This Court, in Principle, Has Ruled in a Manner Favorable to Our Position.*

In *United States* v. *Pacific and Arctic Navigation Co.*, 228 U. S. 87 (1913), steamship lines running from United States to Alaska, a wharf company in Alaska and railroad companies, some of which had their rights of way in Alaska and others of which traversed Canadian territory, were indicted.

The Court below sustained a demurrer to all the counts of the indictment on the ground that the Interstate Commerce Commission had primary jurisdiction over all of the acts charged therein.

Counts 1 and 2 of the indictment charged a conspiracy to fix rates for transportation in violation of the Sherman Act. This Court held that the Interstate Commerce Commission had no power or jurisdiction with respect to such a conspiracy and reversed the judgment of the District Court with respect to counts 1 and 2. This decision, of course, was rendered prior to the enactment of the Reed-Bulwinkle Act (49 U. S. C., § 5 b) and was quite in accord with the prior decisions of this Court in *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290 (1897), and *United States* v. *Joint Traffic Association*, 171 U. S. 505 (1898). This portion of the Court's decision is, therefore, no authority for the conclusion reached below.

Counts 3, 4 and 5 of the indictment charged unlawful and unjust discrimination in violation of the Interstate Commerce Act against the Humboldt Steamship Com-

pany, in connection with the transportation of passengers and freight. This Court affirmed the judgment of the District Court in sustaining a demurrer to these counts, holding that the subject matter thereof was within the exclusive primary jurisdiction of the Interstate Commerce Commission. In affirming the judgment of the District Court as to counts 3, 4 and 5, this Court said at pages 107-108:

> "The contentions of the Government would be formidable indeed if the Interstate Commerce Act was entirely criminal. But it is more regulatory and administrative than criminal. It has, it is true, a criminal provision against violations of its requirements, but some of its requirements may well depend upon the exercise of the administrative power of the Commission. This view avoids the consequences depicted by the Government. It keeps separate the civil and criminal remedies of the act, each to be exercised in its proper circumstances. It makes the Interstate Commerce Act what it was intended to be and defined to be in the cases cited by the District Court, to wit: *Texas & Pacific Ry. Co.* v. *Abilene Cotton Oil Co.* and *Baltimore & Ohio Railroad Co.* v. *Pitcairn Coal Co., supra.* And it would in our judgment be an erroneous view to take that the great problems which the act was intended to solve and the great purposes it was intended to effect should be considered of less consequence than the facility which should be given to some particular remedy, civil or criminal. We need not extend the discussion. The purpose of the Interstate Commerce Act to establish a tribunal

to determine the relation of communities, shippers and carriers and their respective rights and obligations dependent upon the act has been demonstrated by the cited cases, and also the sufficiency of its powers to deal with the circumstances set forth in the indictment."

Attention is drawn to the fact that this Court applied the rule of *Texas & Pacific Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 427 (1907), and *Baltimore & Ohio Railroad Co.* v. *Pitcairn Coal Co.*, 215 U. S. 481 (1910), both of which were cases between private litigants, to the *Pacific and Arctic* case in which the Government, represented by the Attorney General, was the prosecutor. This decision strongly supports petitioners' contention that the application of the doctrine of primary administrative jurisdiction does not depend upon whether the Government or private litigants are involved.

In the case at bar, as pointed out in the *United States Navigation* case, the acts complained of fall within the regulatory and administrative power of the Maritime Board under the Shipping Act. The provisions of that Act are enforceable with respect thereto by the Maritime Board.

(e) *The Dual Rate System Is Not Illegal Per Se.*

Our petition may be opposed by the argument, also advanced below, that the dual rate system is illegal *per se* under the Shipping Act and, hence, that there is no material upon which the Board may exercise its expertise.

This proposition was disposed of by this Court in the *United States Navigation* case. There, too, the argument of illegality *per se* was made. This Court's answer was stated as follows, at page 487:

> "And whatever may be the form of the agreement, and whether it be lawful or unlawful upon its face, Congress undoubtedly intended that the board should possess the authority primarily to hear and adjudge the matter. For the courts to take jurisdiction in advance of such hearing and determination would be to usurp that authority. Moreover, having regard to the peculiar nature of ocean traffic, it is not impossible that, although an agreement be apparently bad on its face, it properly might, upon a full consideration of all the attending circumstances, be approved or allowed to stand with modifications."

The same question was considered by this Court in *Swayne & Hoyt, Ltd.* v. *United States*, 300 U. S. 297 (1937). The comments of the Court with respect thereto appear in the footnote at page 307.

We do not here cite the line of decisions by the Maritime Board and its predecessors in which over the years some contract systems have been upheld and others held bad unless modified in accordance with specified directions.

For the foregoing reasons, this petition for a Writ of Certiorari should be granted.

June 1, 1951.

Respectfully submitted,

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June 1, 1951.

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APPENDIX.

A. Selected provisions of the Sherman Act (extracted from Title 15, U. S. C. A.).

Sec. 1. (15 U. S. C. sec. 1.) Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal * * * Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Sec. 2. (15 U. S. C. sec. 2.) Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

* * * * *

Sec. 4. (15 U. S. C. sec. 4.) The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1-7 and 15 of this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the di-

rection of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

B. Selected provision of the Clayton Act (extracted from Title 15, U. S. C. A.).

Sec. 16. (15 U. S. C. sec. 26.) Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate a preliminary injunction may issue: *Provided,* That nothing contained in sections 12,

13, 14-21, 22-27 of this title shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of chapters 1 and 8 of Title 49, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission.

C. Selected provisions of the Shipping Act, 1916 (extracted from Title 46, U. S. C. A.).

Sec. 1. (46 U. S. C. sec. 801.) When used in this chapter: The term "common carrier by water in foreign commerce" means a common carrier, except ferryboats running on regular routes, engaged in the transportation by water of passengers or property between the United States or any of its Districts, Territories, or possessions and a foreign country, whether in the import or export trade: *Provided,* That a cargo boat commonly called an ocean tramp shall not be deemed such "common carrier by water in foreign commerce".

The term "common carrier by water in interstate commerce" means a common carrier engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between one State, Territory, District, or possession of the United States and any other State, Territory, District, or possession of the United States, or between places in the same Territory, District, or possession.

The term "common carrier by water" means a common carrier by water in foreign commerce or a common carrier by water in interstate commerce on the high seas or the Great Lakes on regular routes from port to port.

The term "other person subject to this Act" means any person not included in the term "common carrier by water," carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water.

The term "person" includes corporations, partnerships, and associations, existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country.

* * * * *

Sec. 14. (46 U. S. C. sec. 812.) No common carrier by water shall, directly or indirectly, in respect to the transportation by water of passengers or property between a port of a State, Territory, District, or possession of the United States and any other such port or a port of a foreign country—

First. Pay or allow, or enter into any combination, agreement, or understanding, express or implied, to pay or allow a deferred rebate to any shipper. The term "deferred rebate" in this chapter [Act] means a return of any portion of the freight money by a carrier to any shipper as a consideration for the giving of all or any portion of his shipments to the same or any

other carrier, or for any other purpose, the payment of which is deferred beyond the completion of the service for which it is paid, and is made only if, during both the period for which computed and the period of deferment, the shipper has complied with the terms of the rebate agreement or arrangement.

Second. Use a fighting ship either separately or in conjunction with any other carrier, through agreement or otherwise. The term "fighting ship" in this chapter [Act] means a vessel used in a particular trade by a carrier or group of carriers for the purpose of excluding, preventing, or reducing competition by driving another carrier out of said trade.

Third. Retaliate against any shipper by refusing or threatening to refuse, space accommodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason.

Fourth. Make any unfair or unjustly discriminatory contract with any shipper based on the volume of freight offered, or unfairly treat or unjustly discriminate against any shipper in the matter of (a) cargo space accommodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage; (b) the loading and landing of freight in proper condition; or (c) the adjustment and settlement of claims.

Any carrier who violates any provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than $25,000 for each offense.

Sec. 14a. (46 U. S. C. sec. 813.) The commission [board] upon its own initiative may, or upon complaint shall, after due notice to all parties in interest and hearing, determine whether any person, not a citizen of the United States and engaged in transportation by water of passengers or property—

(1) Has violated any provision of section 812 of this title; or

(2) Is a party to any combination, agreement, or understanding, express or implied, that involves in respect to transportation of passengers or property between foreign ports, deferred rebates or any other unfair practice designated in section 812 of this title, and that excludes from admission upon equal terms with all other parties thereto, a common carrier by water which is a citizen of the United States and which has applied for such admission.

If the commission [board] determines that any such person has violated any such provision or is a party to any such combination, agreement, or understanding, the commission [board] shall thereupon certify such fact to the Secretary of Commerce. The Secretary shall thereafter refuse such person the right of entry for any ship owned or operated by him or by any carrier directly or indirectly controlled by him, into any port of the

United States, or any Territory, District, or possession thereof, until the commission certifies that the violation has ceased or such combination, agreement, or understanding has been terminated.

Sec. 15. (46 U. S. C. sec. 814.) Every common carrier by water, or other person subject to this chapter [Act], shall file immediately with the commission [board] a true copy, or, if oral, a true and complete memorandum, of every agreement, with another such carrier or other person subject to this chapter [Act], or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term "agreement" in this section includes understandings, conferences, and other arrangements.

The commission [board] may by order disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or

between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be in violation of this chapter [Act], and shall approve all other agreements, modifications, or cancellations.

Agreements existing at the time of the organization of the commission [board] shall be lawful until disapproved by the commission [board]. It shall be unlawful to carry out any agreement or any portion thereof disapproved by the commission [board].

All agreements, modifications, or cancellations made after the organization of the commission [board] shall be lawful only when and as long as approved by the commission [board], and before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation.

Every agreement, modification, or cancellation lawful under this section shall be excepted from the provision of sections 1-11 and 15 of Title 15, and amendments and Acts supplementary thereto.

Whoever violates any provision of this section shall be liable to a penalty of $1,000 for each day such violation continues, to be recovered by the United States in a civil action.

Sec. 16. (46 U. S. C. sec. 815.) It shall be unlawful for any shipper, consignor, consignee, forwarder, broker, or other person, or any officer, agent, or employee thereof, knowingly and willfully, directly or indirectly, by means of false

billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means to obtain or attempt to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable.

That it shall be unlawful for any common carrier by water, or other person subject to this chapter [Act], either alone or in conjunction with any other person, directly or indirectly—

First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Second. To allow any person to obtain transportation for property at less than the regular rates or charges then established and enforced on the line of such carrier by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means.

Third. To induce, persuade, or otherwise influence any marine insurance company or underwriter, or agent thereof, not to give a competing carrier by water as favorable a rate of insurance on vessel or cargo, having due regard to the class of vessel or cargo, as is granted to such carrier or other person subject to this chapter [Act].

Whoever violates any provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than $5,000 for each offense.

Sec. 17. (46 U. S. C. sec. 816.) No common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers or ports, or unjustly prejudicial to exporters of the United States as compared with their foreign competitors. Whenever the commission [board] finds that any such rate, fare, or charge is demanded, charged, or collected it may alter the same to the extent necessary to correct such unjust discrimination or prejudice and make an order that the carrier shall discontinue demanding, charging, or collecting any such unjustly discriminatory or prejudicial rate, fare, or charge.

Every such carrier and every other person subject to this chapter [Act] shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the commission [board] finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice.

* * * * *

Sec. 22. (46 U. S. C. sec. 821.) Any person may file with the commission [board] a sworn complaint setting forth any violation of this chapter [Act] by a common carrier by water,

or other person subject to this chapter [Act], and asking reparation for the injury, if any, caused thereby. The commission [board] shall furnish a copy of the complaint to such carrier or other person, who shall, within a reasonable time specified by the commission [board] satisfy the complaint or answer it in writing. If the complaint is not satisfied the commission [board] shall, except as otherwise provided in this chapter [Act], investigate it in such manner and by such means, and make such order as it deems proper. The commission [board], if the complaint is filed within two years after the cause of action accrued, may direct the payment, on or before a day named, of full reparation to the complainant for the injury caused by such violation.

The commission [board], upon its own motion, may in like manner and, except as to orders for the payment of money, with the same powers, investigate any violation of this chapter [Act].

Sec. 23. (46. U. S. C. sec. 822.) Orders of the commission [board] relating to any violation of this chapter [Act] shall be made only after full hearing, and upon a sworn complaint or in proceedings instituted of its own motion.

All orders of the United States Maritime Commission [Federal Maritime Board], other than for the payment of money, made under this chapter [Act], as amended or supplemented, shall continue in force until its further order, or for a specified period of time, as shall be prescribed in the order, unless the same shall be suspended, or modified, or set aside by the com-

mission [board], or be suspended or set aside by a court of competent jurisdiction.

Sec. 24. (46 U. S. C. sec. 823.) The commission [board] shall enter of record a written report of every investigation made under this chapter [Act] in which a hearing has been held, stating its conclusions, decision, and order, and, if reparation is awarded, the findings of fact on which the award is made, and shall furnish a copy of such report to all parties to the investigation.

The commission [board] may publish such reports in the form best adapted for public information and use, and such authorized publications shall, without further proof or authentication, be competent evidence of such reports in all courts of the United States and of the States, Territories, District, and possessions thereof.

Sec. 25. (46 U. S. C. sec. 824.) The commission [board] may reverse, suspend, or modify, upon such notice and in such manner as it deems proper, any order made by it. Upon application of any party to a decision or order it may grant a rehearing of the same or any matter determined therein, but no such application for or allowance of a rehearing shall, except by special order of the commission [board], operate as a stay of such order.

Sec. 26. (46 U. S. C. sec. 825.) The commission [board] shall have power, and it shall be its duty whenever complaint shall be made to it, to investigate the action of any foreign government with respect to the privileges afforded and burdens imposed upon vessels of the United

States engaged in foreign trade whenever it shall appear that the laws, regulations, or practices of any foreign government operate in such a manner that vessels of the United States are not accorded equal privileges in foreign trade with vessels of such foreign countries or vessels of other foreign countries, either in trade to or from the ports of such foreign country or in respect of the passage or transportation through such foreign country of passengers or goods intended for shipment or transportation in such vessels of the United States, either to or from ports of such foreign country or to or from ports of other foreign countries. It shall be the duty of the commission [board] to report the results of its investigation to the President with its recommendations and the President is authorized and empowered to secure by diplomatic action equal privileges for vessels of the United States engaged in such foreign trade. And if by such diplomatic action the President shall be unable to secure such equal privileges then the President shall advise Congress as to the facts and his conclusions by special message, if deemed important in the public interest, in order that proper action may be taken thereon.

Sec. 27. (46 U. S. C. sec. 826.) For the purpose of investigating alleged violations of this chapter [Act], the commission [board] may by subpoena compel the attendance of witnesses and the production of books, papers, documents, and other evidence from any place in the United States at any designated place of hearing. Subpoenas may be signed by any member of the

commission [board], and oaths or affirmations may be administered, witnesses examined, and evidence received by any member or examiner, or, under the direction of the commission [board], by any person authorized under the laws of the United States or of any State, Territory, District, or possession thereof to administer oaths. Persons so acting under the direction of the commission [board] and witnesses shall, unless employees of the commission [board], be entitled to the same fees and mileage as in the courts of the United States. Obedience to any such subpoena shall, on application by the commission [board], be enforced as are orders of the commission [board] other than for the payment of money.

Sec. 28. (46 U. S. C. sec. 827.) No person shall be excused on the ground that it may tend to incriminate him or subject him to a penalty or forfeiture, from attending and testifying, or producing books, papers, documents, and other evidence, in obedience to the subpoena of the commission [board] or of any court in any proceeding based upon or growing out of any alleged violation of this chapter [Act]; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing as to which, in obedience to a subpoena and under oath, he may so testify or produce evidence, except that no person shall be exempt from prosecution and punishment for perjury committed in so testifying.

Sec. 29. (46 U. S. C. sec. 828.) In case of violation of any order of the commission [board],

other than an order for the payment of money, the commission [board], or any party injured by such violation, or the Attorney General, may apply to a district court having jurisdiction of the parties; and if, after hearing, the court determines that the order was regularly made and duly issued, it shall enforce obedience thereto by a writ of injunction or other proper process, mandatory or otherwise.

Sec. 30. (46 U. S. C. sec. 829.) In case of violation of any order of the commission [board] for the payment of money the person to whom such award was made may file in the district court for the district in which such person resides, or in which is located any office of the carrier or other person to whom the order was directed, or in which is located any point of call on a regular route operated by the carrier, or in any court of general jurisdiction of a State, Territory, District, or possession of the United States having jurisdiction of the parties, a petition or suit setting forth briefly the causes for which he claims damages and the order of the commission in the premises.

In the district court the findings and order of the commission [board] shall be prima facie evidence of the facts therein stated, and the petitioner shall not be liable for costs, nor shall he be liable for costs of any subsequent stage of the proceedings unless they accrue upon his appeal. If a petitioner in a district court finally prevails, he shall be allowed a reasonable attorney's fee, to be taxed and collected as part of the costs of the suit.

All parties in whose favor the commission [board] has made an award of reparation by a single order may be joined as plaintiffs, and all other parties to such order may be joined as defendants, in a single suit in any district in which any one such plaintiff could maintain a suit against any one such defendant. Service of process against any such defendant not found in that district may be made in any district in which is located any office of, or point of call on a regular route operated by, such defendant. Judgment may be entered in favor of any plaintiff against the defendant liable to that plaintiff.

No petition or suit for the enforcement of an order for the payment of money shall be maintained unless filed within one year from the date of the order.

Sec. 31. (46 U. S. C. sec. 830.) The venue and procedure in the courts of the United States in suits brought to enforce, suspend, or set aside, in whole or in part, any order of the commission [board], shall, except as otherwise provided, be the same as in similar suits in regard to orders of the Interstate Commerce Commission, but such suits may also be maintained in any district court having jurisdiction of the parties.

Sec. 32. (46 U. S. C. sec. 831.) Whoever violates any provision of this chapter [Act], except where a different penalty is provided, shall be guilty of a misdemeanor, punishable by fine of not to exceed $5,000.